IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LETTERS PATENT APPEAL NO.288 OF 1999

FROM

WRIT PETITION NO.2801 OF 1988

A.G. Dhore & others ... ... Appellants

Versus

Vaccum Plant & Instruments Manufacturing Company Limited & anr. ... Respondents

Mr.A.V. Bukhari for appellants.

Mr.S.K.Talsania with Mr.Kiran Bapat i/by M/s.Haresh Mehta & Co. for respondent No.1.

Respondent No.2 is a formal respondent.

W I T H

WRIT PETITION NO.4125 OF 2003

A.G. Dhore & others. ... Petitioners

Versus

Vaccum Plant & Instruments Manufacturing Company Limited & anr. ... Respondents

Mr.A.V. Bukhari for petitioners.

Mr.S.K.Talsania with Mr.Kiran Bapat i/by M/s.Haresh Mehta & Co. for respondent No.1.

Respondent No.2 is a formal respondent.

CORAM : H.L.GOKHALE &
SMT.V.K.TAHILRAMANI, JJ.

DATE OF RESERVATION OF JUDGMENT : 23.12.2004

DATE OF PRONOUNCEMENT OF JUDGMENT:28th April 2005

JUDGMENT : (Per H.L. Gokhale, J.)

1. Respondent No.1-company is engaged in the manufacture of vacuum plants which are used in preparation of power transformers and motors amongst others and its main customers are stated to be government and semi-government organisations. In the year 1983, the company was stated to have faced stringent financial problems for various reasons including not receiving the payments from its clients in time. Respondent No.1 initially laid off some of its employees vide Notice dated 28th April 1983 and since there was no improvement, it retrenched some 93 employees after six months i.e. on 20th November 1983.

2. The Vacuum Plant Kamgar Sanghatana, a Union of employees, challenged the retrenchment on various grounds and demanded reinstatement with full back wages and continuity. That dispute was referred for adjudication of the Industrial Tribunal, Pune. The said Reference (IT) No.23 of 1984 came to be decided by the Industrial Tribunal at Pune vide its Award dated 27th March 1987. The Tribunal dismissed the said Reference by holding

amongst others that there were no violations of any law and that the retrenchment was neither mala fide nor unjustified.

3. The Union of employees filed Writ Petition No.2801 of 1988 invoking Article 227 of the Constitution of India to challenge the said Award. During the course of that petition, A.G. Dhore and others, the concerned employees, substituted themselves in place of the said Union. The petition came to be decided by a learned Single Judge of this Court by oral judgment dated 15th October 1998. The learned Judge accepted the submission of the employees that the retrenchment compensation paid to them was not correct since the lay off compensation paid earlier to them had been deducted therefrom by the 1st petitioner-Company and that the said deduction was illegal. He, therefore, held that there was violation of Section 25-F of the Industrial Disputes Act, 1947. The learned Judge, however, accepted the conclusion of the Tribunal that the retrenchment was a bona fide and justified one and that there was no malice or victimization. He, therefore, held that it would not be proper to grant the relief of reinstatement. He revived the

reference and remanded it back to the Tribunal to find out as to what would be the proper compensation / back wages payable to each of the 65 employees then contesting the matter. (The correct number should be 64).

4. It is this judgment and order of the learned Single Judge which is challenged by the appellants in the present appeal filed under Clause 15 of the Letters Patent of this Court. After looking into the totality of the circumstances and hearing the Counsel for respondent No.1-company, the said appeal was admitted by a Division Bench on 3rd November 1999. The 1st respondent raised the question of maintainability of the appeal. In Para-3 of the order passed while admitting the appeal, the Division Bench observed as follows:-

> We are not inclined to go into the maintainability of the appeal and therefore we keep the issue open to be argued at the final hearing of the appeal."

The appellants applied for stay of the proceedings

on remand. That request was also turned down by the said Division Bench and it observed as follows in Para-2 of its order:-

> " In our view, it is not necessary to stay the continuation of the proceedings before the Industrial Court as the evidence recorded by the Industrial Court would actually be useful and material for considering the reliefs, if any, to be granted in this appeal itself."

5. As noted above, although the Letters Patent Appeal was admitted, the Division Bench did not stay the revived proceedings before the Industrial Tribunal. The Tribunal proceeded with the revived reference and gave its Award on 3rd May 2000 wherein it directed the 1st respondent-company to pay each of the 64 employees lay off compensation as mentioned in that Award. The Tribunal further directed the company to pay in addition 12 months' wages (basic plus dearness allowance) on the basis of the last drawn salary as on the date of their retrenchment i.e. 23rd November 1983 in lieu of reinstatement and full back wages. It is the case of the 1st

respondent-company that some 34 of its employees have received the amounts as per the directions of the Tribunal and have issued the necessary receipts in full and final settlement of their claims very recently. The appellants-employees have preferred a separate writ petition bearing No.4125 of 2003 to challenge the said Award of the Tribunal.

6. This second writ petition is, of course, without prejudice to the submissions of the employees in their Letters Patent Appeal. The submission of the employees in the Letters Patent Appeal is that the order of the learned Single Judge is erroneous and ought to be interfered with in the Letters Patent Appeal. It is the contention of the employees that since the learned Single Judge held that the retrenchment was bad in law, he ought to have granted the employees reinstatement with full back wages and ought not to have remanded the matter for the limited purpose of appropriate wages and compensation. In the event, however, if this Hon’ble Court does not interfere with the order passed by the learned Single Judge, then the order passed by the Tribunal subsequently on 3rd May 2002 on remand be

interfered with since the same is erroneous and does not grant them correct wages / compensation as directed by the learned Single Judge. This second petition is filed under Articles 226 and 277 of the Constitution and apart from seeking to quash the Award dated 3rd May 2002, it seeks a writ of mandamus directing the 1st respondent-company to reinstate all the petitioners with full wages, continuity of service and consequential reliefs.

7. As against these submissions of the employees, the principal submission of the 1st respondent-company is that the Letters Patent Appeal itself is not maintainable since earlier Writ Petition No.2801 of 1988 was filed invoking only Article 227 of the Constitution of India. Its submission is that the proceeding under Article 227 is not an original proceeding and, therefore, an appeal under Clause 15 of the Letters Patent is not available against the order passed in such a proceeding. That apart, the 1st respondent's defence is that the order passed by the learned Single Judge is a correct and appropriate one. It is submitted that the order passed by the learned Single Judge has already

worked out itself since the Tribunal has decided the issues consequent upon the remand and that 34 out of 64 employees have already received the amounts as per that Award in full and final settlement. Undoubtedly, the 1st respondent defends the Award of the Industrial Tribunal on remand and it is submitted that in the facts and circumstances of the case, the compensation awarded by the Tribunal is the correct one and no further amount ought to be awarded. It is further submitted that the yardstick applied by the Tribunal is correct and there should not be any interference.

8. When the aforesaid second writ petition bearing No.4125 of 2003 came up for admission before a learned Single Judge, he made a reference to the order passed by the Division Bench while admitting LPA No.288 of 1999. The learned Judge noted that the Division Bench while admitting the appeal on 18th November 1999, had not stayed the revived proceeding and had observed that the evidence recorded by the Industrial Tribunal would actually be useful and material for considering the reliefs, if any, to be granted in the appeal. Having noted these circumstances, the learned

Single Judge admitted Writ Petition No.4125 of 2003.

9. As stated above, the Division Bench while admitting the LPA had observed that the evidence recorded by the Industrial Tribunal on remand would actually be useful in considering the reliefs to be granted in the appeal. The Counsel for the employees applied that Writ Petition No.4125 of 2003, which was pending before the learned Single Judge, be heard along with LPA No.288 of 1999. The Acting Chief Justice, by an order passed on 25th November 2004, directed that Writ Petition No.4125 of 2003 be heard along with Letters Patent Appeal No.288 of 1999. Accordingly, both the LPA as well as the writ petition are heard and decided together. Mr.Bukhari has appeared for the appellants / petitioners-employees, whereas Mr.Talsania and Mr.Bapat have appeared for respondent No.1-company. Respondent No.2 being a Member of the Tribunal is a formal party.

10. Before we deal with the merits of the LPA as well as the writ petition, we have to deal with the preliminary objection raised by the 1st

respondent with respect to the maintainability of the Letters Patent Appeal. It is contended on behalf of the 1st respondent that inasmuch as Writ Petition No.2801 of 1988 was filed under Article 227 of the Constitution of India, the same invoked the revisional jurisdiction of this Court and under Clause 15 of the Letters Patent, an appeal is not available against any such revisional order. The appeal is available only against an original order passed by a learned Single Judge. As against this, the submission of the appellants is that although Writ Petition No.2801 of 1988 invoked Article 227 of the Constitution of India, one must see as to what were the averments, grounds and the prayers in the said writ petition. It is submitted that if one looks at them, it will be seen that it was a petition, in essence, invoking Article 226 of the Constitution also.

11. It is submitted on behalf of the 1st respondent that Writ Petition No.2801 of 1988 clearly invoked only Article 227 as can be seen from the title of the petition. Not only that but Article 227 alone was referred in Para-15 of the petition which sets out various grounds of challenge. Para-16 containing the jurisdiction

clause as also Para-6 of the rejoinder filed by the employees before the learned Single Judge, affirmed in July 1980 invoked only Article 227. The impugned judgment of the learned Single Judge also mentioned in the very first paragraph thereof that this was a petition under Article 227 of the Constitution of India arising out of the Award dated 27th March 1987 passed by the Industrial Tribunal, Pune. It is, therefore, submitted that the understanding of the appellants was clear viz. that it was a petition under Article 227. This petition was answered by the respondents and decided by the learned Single Judge also with the clear understanding that it invoked only Article 227.

12. As against this, it is submitted on behalf of the appellants-employees that although the learned Single Judge does refer to begin with that what he was deciding was a petition under Article 227, he had not stated under which provision he was deciding the matter. It is further submitted on behalf of the employees that in Para-5 of the petition, it is stated that mandatory provision of Section 25-F of the Industrial Disputes Act had not been complied with. In Para-10 it was contended that the Tribunal had committed gross

error apparent on the face of the record in not considering the exact number of the employees and it showed non-application of mind. In Para-11 of the petition, it is claimed that the Tribunal failed to do justice. In Para-12, it is submitted that the Tribunal has failed to exercise the jurisdiction vested in it and has ignored that the employer has committed breach of Section 25-H of the Industrial Disputes Act. At the end of Para-13 of the petition, it is contended that the trial Court has committed an error apparent on the face of the record in concluding that the employer has complied with Section 25-F of the I.D. Act. It is submitted that in Para-14 a contention is raised that the Tribunal has acted with material irregularity. In Para-15 of the petition, various grounds are raised and there is a specific mention of writ of certiorari. Lastly, our attention is drawn to the prayer clauses and it is submitted that in prayer clause (a) there is a specific prayer for the writ of certiorari and setting aside of the impugned Award. In prayer clause (b), there is a prayer for mandamus to reinstate 93 retrenched workers. It is, therefore, submitted that although Article 226 is not specifically mentioned, the same is very much writ

large on the writ petition and the petition ought to be considered as one under Articles 226 as well. It is further submitted that although the impugned judgment and order of the learned Single Judge begins by saying that he was deciding a petition filed under Article 227, the same ought to be treated as one dealing with the prayers under Article 226 of the Constitution of India.

13. The learned Counsel for both the parties placed heavy reliance on some of the leading judgments holding the field on this question viz. (i) **Umaji Keshav Meshram vs. Radhikabi reported in AIR 1986 S.C. 1272, (ii) Lokmat Newspapers Pvt.Ltd. vs. Shankarprasad reported in (1999) 6 SCC 275, (iii) Kanhaiyalal Agarwal vs. Factory Manager, Gwalior Sugar Co. Ltd. reported in (2001) 9 SCC 609, (iv) Ratnagiri District Central Co-operative Bank vs. Dinkar Kashinath Watve reported in (1993) Supp. 1 SCC page 9, (v) Sushilabai Mudliar vs. Nihalchand reported in AIR 1992 SC 185 and (vi) Mangalbhai vs. Radheshyam Agarwal reported in 1993 Maharashtra Law Journal 567.** Reliance was also placed on a Division Bench judgment of this Court in the case of **Madhukar Mohite vs. Balkrishna Sulakhe** reported in **101(3)**

1999 BLR page 824. We will deal with the propositions emerging therefrom one by one.

14. The leading case laying down the law on this aspect is **Umaji Keshao Meshram & others vs. Smt.Radhikabai & anr. reported AIR 1986 SC 1272**. Para-2 of that judgment (Per Madon, J.) clearly records the question which fell for determination in that appeal before the Apex Court which was as follows:-

> " Whether an appeal lies under Cl.15 of the Letters Patent of the Bombay High Court to a Division Bench of two judges of that High Court from the judgment of a single Judge of that High Court in a petition filed under Art.226 or 227 of the Constitution of India? "

In para-9 of that judgment, the Court analysed this Clause 15 and broke it into different parts. This para-9 reads as follows:-

> " 9. When analysed and broken up into its component parts Cl.15 in its finally amended and operative form reads

as follows:

(1) from a judgment

(2) of one Judge of the High Court

(3) pursuant to S.108 of the Government of India Act of 1915

(4) not being -

(a) a judgment passed in the exercise of appellant jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court,

(b) an order made in the exercise of revisional jurisdiction,

(c) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of S.107 of the Government of India Act 1915, or

(d) a sentence or order passed or made in the exercise of criminal jurisdiction. "

15. Thereafter the Court dealt with the historical developments with respect to the powers under this clause and various judgments thereon and in para-98 came to the following conclusion:-

> "98. From what has been said above it must follow that when a single Judge of a Chartered High Court decides a petition under Article 226 or 227, his judgment is one given pursuant to Article 225 of the Constitution and is appealable under Clause 15 of the Letters Patent unless it falls within one of the excluded categories. "

Thereafter in para-99 the Court dealt with the scope of the Articles 226 and 227 and observed as follows:-

> "99. ..... These two Articles stand on an entirely different footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226, the High Courts have power to issue directions, orders and writs to any person or authority including any Government. Under Article 227 every High Court has the power of superintendence

over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warranto or prohibition or certiorari be equated with the power of superintendence. "

Then it further observed as follows:-

" Though at the first blush it may seem that a writ of certiorari or a writ of prohibition partakes of the nature of superintendence inasmuch as at times the end result is the same, the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Articles 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same. "

In the light of this discussion, the Court concluded in para-100 that the series of decisions of Apex Court have also firmly established that proceeding under Article 226 is an original proceeding, whereas it held in para-102 that it is equally well settled in law that the proceeding under Article 227 is not an original proceeding.

16. Finally, the Court held in para-103 as follows:-

> " 103. Under Clause 15 of the Letters Patent of the Bombay High Court no intra-Court appeal lay against an "order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act". By the same process of interpretation by reason of which the phrase "pursuant to Section 108 of Government of India Act" in Clause 15 is to be read as "pursuant to Article 225 of the Constitution of India", the phrase "order passed or made in the exercise of the power of superintendence under the

> provisions of Section 107 of the Government of India Act" is to be read as "order passed or made in the exercise of superintendence under the provisions of Article 227 of the Constitution". The result is that an intra-Court appeal does not lie against the judgment of a single Judge of the Bombay High Court given in a petition under Art.227 by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of that High Court."

17. Thus, the Apex Court clearly held that whereas an intra-court appeal against the judgment of the single Judge in a petition under Article 226 is not barred, Clause 15 itself bars an intra-court appeal against the judgment of the single Judge in a petition under Article 227. This is a conclusion drawn at the end of para-105. Thereafter the Court noted in para-106 that petitions are filed at times both under Articles 226 and 227 of the Constitution and the question is as to whether an appeal would lie from the decision of the single Judge in such a case. It is the observations of the Apex Court on this question which are material for our purpose and

they are as follows:-

> " 106. ..... In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. "

18. Thus, as can be seen from what is recorded above, the judgment clearly lays down that when a judgment is rendered by a single Judge in a petition under Article 226, there is no difficulty in entertaining an intra-court appeal. Similarly

where a judgment is rendered on a petition under Article 227, an intra-court appeal is squarely barred. It is, however, when the petitions are filed invoking both these Articles that the Apex Court observed that when facts justified a party in filing such an application invoking both these Articles, the Court ought to treat such an application as one under Article 226 in fairness and justice to such a party and in order not to deprive him of his valuable right of appeal. This will be so even if in deciding the matter in the final order, the Court has given an ancillary direction which may pertain to Article 227. This should be so where the substantial part of the order sought to be appealed against is one under Article 226. Thus, this approach is to be adopted where the petition invokes both the Articles and the facts justify filing such an application and where the substantial part of the order rendered thereon is under Article 226, even though the ancillary directions may pertain to Article 227. Thus, what is to be noted is that (i) the facts of the matter ought to justify the party filing an application under Article 226 or 227 and the party files the application under both the Articles and (ii) the substantial part of the order rendered

thereon is also under Article 226. Both these tests are required to be considered while adopting this liberal approach from the point of view of fairness and justice.

19. This judgment is followed by a short order in the case of **Ratnagiri District Central Co-opertive Bank Ltd. vs. Dinkar Kashinath Watve & others reported in 1993 Supp (1) SCC 9**. In this matter, a petition was filed before a single Judge invoking both Articles 226 and 227. The Apex Court quoted the above-referred para-106 in the case of **Umaji vs. Radhikabai (supra)** and then noted that the relief granted in the case in hand clearly indicated that the learned single Judge was exercising jurisdiction under Article 226 and not under Article 227 and, therefore, held that appeal was maintainable under Clause 15. Thus, as far as this judgment is concerned, the appeal Court emphasized the fact of relief granted by the learned single Judge.

20. Then we have a judgment in the case **Sushilabai L. Mudiyar & others vs. Nihalchand W. Shaha & others reported in AIR 1992 SC 185** wherein also the question was with respect to the

maintainability of an appeal when a petition is heard and decided by a single Judge filed under Article 226 read with Article 227. The Apex Court noted the observations of the Full Bench of this Court in the case of **Sushilabai L. Mudiyar vs. Nihalchand W. Shaha & others reported in 1989 Maharashtra Law Journal 695** in para-1 of its judgment. It noted that the Full Bench has emphasized that the real nature of the principal order passed by the single Judge is to be considered and not the mentioning of the Articles in the cause title. The Full Bench had, however, as well noted that in the event the judgment of the learned single Judge himself had mentioned the particular Article under which he was passing his judgment in the appeal, it may not be necessary for the Appellate Bench to elaborate and examine the question of maintainability of the appeal under Clause 15. In paragraph 3, the Apex Court again reiterated what is recorded in paragraph 106 in the case of **Umaji vs. Radhikabi (supra)** and reiterated those very propositions in para-4. In para-3 of its judgment, however, it emphasized that the grounds taken in the writ petition unmistakably go to show that it was a petition under Article 226 and the order passed by the

learned single Judge was also under Article 226. Thus, as far as this judgment is concerned, it emphasized the grounds taken in the petition. Thus, whereas the judgment in the case of **Ratnagiri District Central Co-operative Bank Ltd. (supra)** emphasized the relief granted by the learned single Judge, the judgment in the case of **Sushilabai vs. Nihalchand (supra)** emphasized the grounds raised in the petition before the learned single Judge.

21. Then we have a judgment in the case of **Lokmat Newspapers Pvt.Ltd. vs. Shankarprasad reported in (1999) 6 SCC 275**. This was a matter arising out of a labour dispute and the decision of a Division Bench of this Court in a Letters Patent Appeal was under challenge before the Apex Court. One of the questions raised on behalf of the appellant was that the Letters Patent Appeal filed by the respondent-workman which was entertained by the High Court itself was not maintainable. The Apex Court held that the appeal was very much maintainable. It noted in para-9 of its judgment that the petition filed by the respondent was under Articles 226 and 227 of the Constitution of India. In para-15 of its

judgment, the Court referred to the relevant paragraphs of the writ petition. It noted the averments to the effect that the Courts below (Labour and Industrial) had lost sight of the object and purpose of the relevant provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, had committed serious errors of law apparent on the face of record which resulted in a serious miscarriage of justice and also in failure to exercise the jurisdiction vested in it. It further noted that in para-9 of the writ petition it was averred that the impugned orders of the Courts below had further resulted in infraction of the fundamental rights of the respondent under Articles 14 and 21 and other Articles of the Constitution. Therefore, in para-16 the Apex Court concluded that obviously the petition was invoking jurisdiction under Articles 226 and 227. Basic averments to invoke such a jurisdiction had been pleaded in the petition. A writ of certiorari was sought under Article 226. The Court noted that the order of the learned single Judge no where stated that it was considering the petition under Article 226. Yet it also observed that the observations of the learned single Judge

did not necessarily mean that he was not inclined to interfere under Article 227 alone. The Court emphasized that the learned single Judge was considering the petition moved under Article 226 as well as under Article 227 and, therefore, it was not possible to accept that the single Judge had refused to interfere only under Article 227. The Apex Court again reiterated the above-referred para-106 in Umaji vs. Radhikabai's case (supra) (para-107 in the Report of SCC) and held that in the case in hand, it was open to the respondent to invoke the jurisdiction under Articles 226 and 227. Once such a jurisdiction was invoked and the petition was dismissed on merits, it could not be said that the learned single Judge had exercised his jurisdiction only under Article 227. It further added its conclusion which directly flows from the relevant averments in the petition and the nature of jurisdiction in it. Consequently it held that the jurisdiction under Clause 15 was attracted.

22. Last but not the least is a judgment in the case of **Kanhaiyalal Agrawal vs. Factory Manager, Gwalior Sugar Co.Ltd. reported in (2001) 9 SCC 609**. This was a case where the appellant

and some other workers were chargesheeted for making certain payments to a party for allegedly bringing sugarcane in the factory without there being any arrival of sugarcane. The workers concerned were dismissed after holding the departmental enquiries. The Labour Court came to the conclusion that there was a case of loss of faith. It, therefore, denied relief of reinstatement but granted only half salary and full returning allowances from the date of dismissal till the date of the order. In an appeal to the Industrial Court it was held that this was a case where it will not be proper to draw an inference of dishonesty but it was a case more than of negligence. The Industrial Court noted that more than 10 years had passed after the termination of the employees. It, therefore, directed reinstatement without back wages and held that denial of back wages will be a sufficient punishment. On petitions being filed by the workmen as well as the management, the single Judge did not interfere with the order passed by the Industrial Court. He held that the punishment of denial of back wages would serve the ends of justice. Thereafter, the Apex Court observed at the end of para-5 of its Report as follows with

respect to the Letters Patent Appeal:-

> " Against that order of the learned Single Judge writ appeals were preferred by both the management and the workmen. The writ appeals were, however, dismissed on the basis that they were not maintainable inasmuch as the same arose out of proceedings under Article 227 of the Constitution of India which is revisional in nature. "

These orders were in challenge before the Apex Court. The Apex Court looked into the matter both from the point of view of the maintainability of the appeal before the Division Bench as well as on the merits of the order of the learned single Judge. In paras 6 and 7 of its judgment, it observed as follows with respect to the Letters Patent Appeal:-

> " 6. So far as the law on the matter is concerned, as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order

of the Labour Court, this Court in its decision in Lokmat Newspapers (P) Ltd. vs Shankarprasad stated that if a Single Judge exercises jurisdiction under Article 226, letters patent appeal would be maintainable. But with an explanation that if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. This Court held as aforesaid in view of the decisions of this Court in Umaji Keshao Meshram vs. Radhikabai, Ratnagiri Distt. Central Coop. Bank Ltd. v. Dinkar Kashinath Watve and Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha.

7. Hence, we are of the view that it is wholly unnecessary for us to examine this aspect of the matter in view of the

declaration of law made by this Court in Lokmat Newspapers (P) Ltd. v. Shankarprasad after adverting to all the decisions on the point. "

23. Thereafter the Court looked into the orders passed by the Labour and Industrial Courts as well as by the learned single Judge and came to the conclusion that the order passed by the Industrial Court was based on the facts arising in the case. In para-11, it concluded that the writ jurisdiction had been appropriately exercised by the learned single Judge. The Court, therefore, did not interfere in any manner with the order passed by the Division Bench.

24. The aforesaid observations in para-6 of the judgment indicate that where the single Judge does not mention as to under which provision he was deciding the matter and where the facts justify filing of the petition both under Articles 226 and 227, the matter may be considered in its proper perspective in an appeal. What is most important to note is that the Apex Court has not found any fault with the Division Bench not exercising the appellate jurisdiction. It is

pertinent to note that the Division Bench had declined to exercise the appellate jurisdiction as the same arose out of the proceeding under Article 227 which is revisional in nature. That apart, after observing that the matter may be considered in its proper perspective in an appeal, the Apex Court has looked into the contentions on the merits of the parties in para-9 of the judgment and concluded in para-10 that the inferences have been appropriately drawn and, therefore, further concluded in para-11 that the orders of the Industrial Court do not suffer from non-application of mind or taking into consideration any facts not available on record and the conclusion cannot be characterized as perverse. The Court, therefore, held that writ jurisdiction has been properly exercised by the learned single Judge. Thus, apart from not interfering with the order of the Division Bench on the question of jurisdiction, the Court also held that when looked at in its proper perspective, the orders passed were justified on merits as well.

25. The parties have also made a reference to a judgment of a Division Bench in the case of

Madhukar C. Mohite vs. Balkrishna G. Sulakhe reported in 1999 Vol.101 (3) BLR 824. In that matter various tests emerging from the Supreme Court judgments where the facts justify the filing of a petition under Article 226 or 227 have been laid down.

26. The conclusion that we have to draw from the aforesaid analysis is that when a petition is filed under Article 226, undoubtedly, an intra-court appeal is available. When a petition is filed under Article 227 alone, an intra-court appeal is not available. [Last sentence in para-105 of Umaji vs. Radhikabi's case (supra)]. At the same time, when a petition is filed under Articles 226 and 227 and where the facts justify filing of such a petition under both these Articles and where the substantial part of the order sought to be appealed is under Article 226, an appeal would be available in fairness and justice, though the ancillary directions may be pertaining to Article 227 alone. (Para-106 of Umaji vs. Radhikabai's case). In such petitions filed under Articles 226 and 227, the relief granted by the learned single Judge is to be seen. [Ratnagiri District Central Co-op.Bank Ltd.

(supra)]. In such petitions invoking both the Articles the grounds taken in the writ petition are to be looked into. [Para-3 in the case of Sushilabai vs. Nihalchand (supra)]. We have also a judgment in the case of **Mangalbhai & others vs. Dr.Radheshyam P. Agarwal reported in 1993 Maharashtra Law Journal page 567**. That was a matter arising out of C.P. and Berar Letting of Houses and Rent Control Order where the respondent had filed a proceeding for eviction against the appellants on the ground of bona fide requirement and habitual default. The Rent Controller as well as the Resident Deputy Collector dismissed the original and appellate proceedings filed by the respondent-landlord. He thereafter filed a petition under Articles 226 and 227. A single Judge of this Court held that the tenant was habitual defaulter and the landlord had established bona fide requirement. He, however, remanded the matter back to Rent Controller for determining the extent of the requirement of the respondent. The tenant filed a Letters Patent Appeal. A Division Bench took the view that, in substance, the order was one under Article 227 and, therefore, dismissed the LPA. The tenant then filed an SLP to the Apex Court. The Apex

Court again referred to the observations in the case of Umaji vs. Radhikabai (supra) and in para-6, came to the conclusion that in the totality of the facts and circumstances of the case, the pleadings of the parties in the writ petition and the judgment of the learned single Judge left no manner of doubt that it was an order passed under Article 226 and the LPA was maintainable. It, therefore, allowed the appeal. In such petitions invoking both the Articles, the averments in the petition and the nature of jurisdiction invoked are to be looked into and it is immaterial that the learned single Judge does not mention the particular Article under which he is deciding the matter. [Paras 15 & 16 of Lokmat Newspapers' case (supra)].

27. In the present case, it is clear that Article 226 is no where mentioned in Writ Petition No.2801 of 1988. Paragraph 16 thereof specifically states that the impugned Award was passed at Pune and this Hon'ble Court has jurisdiction to try this petition under Article 227 of the Constitution of India. That the powers of superintendence of this Court are invoked against an order of a Tribunal is very clear since

Article 227 is mentioned all throughout. If we look to the averments in the petition, as we have noted earlier, it is stated that the mandatory provisions of Section 25F of the I.D. Act are not followed and, therefore, there is non-application of mind on the part of the Tribunal, that the Tribunal has committed gross error apparent on the fact of record in not considering the exact number of employees, and that it has acted with material irregularity. These are all grounds of challenge, that are taken when awards of Tribunal are challenged and Article 227 is sufficiently wide for that purpose. There have been numerous judgments to that effect but to note a few for ready reference, failure to exercise jurisdiction is a ground available under this Article as held by a Constitution Bench in paragraph 14 in the case of **Waryam Singh vs. Amarnath reported in AIR 1954 S.C. 215**. Similarly error of law apparent on the face of record can be corrected under this Article as held in the case of **Provincial Transport Services vs. State of Industrial Court, Nagpur & others reported in AIR 1963 S.C. 114** and in the case of **State of Gujarat vs. Vakhatsinghji Vajesinghji Vaghela (dead) his legal representatives & others reported in AIR 1968 S.C.**

1481.

28. Prayer clause (a) of the petition refers to writ of certiorari to set aside the impugned award and prayer clause (b) refers to mandamus to reinstate the 93 retrenched workmen. Now, as observed by the Apex Court in the latter part of paragraph 99 in the case of **Umaji vs. Radhikabai (supra)** that though at first blush it may seem that a writ of certiorari partakes of the nature of superintendence, yet the powers conferred by Articles 226 and 277 are distinct. The writ of certiorari as well as power of superintendence can be invoked to set aside the award of the Tribunal but as observed by a Constitution Bench of the Apex Court in the case of **Hari Vishnu Kamath vs. Ahmad Ishaque & others** reported in **AIR 1955 S.C. 233** in paragraph 20 thereof that "while in a 'certiorari' under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter." In the present case, the petitioners did not want merely the setting aside of the award but a direction to reinstate the 93 retrenched workmen. That could be done under Article 227 which is available against the

subordinate Courts and Tribunals. If we took to the grounds and prayers it is seen that the purpose in filing the petition is setting aside the award and getting the ancillary directions, which can be achieved under Article 227 only. Similarly there was no occasion to seek the writ of mandamus against a private employer or the Tribunal in the facts of the present case.

29. As we have noted above, in paragraph 106 of Umaji vs. Radhikabai's case (supra), the Apex Court has observed that what is to be seen is as to where facts justify a party in filing the application under either of the articles and the party chosen to file it under both of them, the party should not be deprived of the valuable right of appeal and the application is to be treated as one under Article 226. This will be where substantial part of the order sought to be appealed against is under Article 226. In the judgments of the Apex Court referred to above i.e. in Lokmat Newspapers, Ratnagiri District Central Co-operative Bank, Sushilabai Mudliar and Mangalbhai (all supra), the applications had invoked both Articles 226 and 227 and the Letters Patent Appeals filed by the applicants came to be

entertained. Lokmat Newspapers was a matter arising from the order of Labour and Industrial Courts and apart from raising the grounds such as failure to exercise jurisdiction and error of law apparent on the fact of record, infraction of fundamental rights under Articles 14 and 21 was also pressed in service and Article 226 was undoubtedly invoked. Similarly the judgment in Kanhaiyalal Agarwal (supra) cannot carry the case of the appellants further. We have noted the observations in that case above that on jurisdiction of the LPA Court, the judgment reiterates the law settled in Umaji vs. Radhikabai's case (supra) and in the case of Lokmat Newspapers (supra).

30. In the facts of the present case, it is clear that Article 226 is not invoked. The purpose of filing of the petition is to interfere with the award of Tribunal and to seek direction of reinstatement. The grounds invoked to challenge the award are clearly coverable under Article 227 which has been invoked. That was the writ application to the learned Single Judge which has come to be decided in the impugned order. In no way, can it be said that the substantial part

of the order rendered thereon and under challenge is under Article 226. In the circumstances, a reference to the writ of certiorari and mandamus in the prayers cannot take the writ petition as one under Article 226 to enable the appellants to seek an interference in a Letters Patent Appeal. We, therefore, uphold the objection of the respondents that the Letters Patent Appeal is not maintainable in the facts of the present case. In view of this conclusion, it will be impermissible for us to go into the determination arrived at by the learned Single Judge in deciding Writ Petition No.2801 of 1988 and we decline to do the same. Letters Patent Appeal No.288 of 1999 will consequently stand dismissed, though without any order as to costs.

31. That takes us to Writ Petition No.4125 of 2003 which is filed by the workmen to challenge the Award dated 3rd May 2000 of the Tribunal rendered after the Reference was revived and remanded to it by the learned Single Judge as per the judgment in Writ Petition No.2801 of 1988. The Reference was revived to examine as to what would be proper compensation / wages to be awarded to the workmen on account of their retrenchment

and in lieu of their claim for reinstatement with full back wages. After the remand, the Tribunal has awarded the unpaid lay off compensation plus 12 months' wages (basic plus dearness allowance) on the basis of last drawn salary on the date of their retrenchment i.e. 20th of November 1983 with interest at 6% till realization. We are told that 34 out of the 64 workmen have received these amounts in the meanwhile.

32. Before we proceed further, we must note that the retrenchment of the concerned workmen was resorted to by the 1st respondent-Company on 20th November 1983 only after exploring the possibility of lay off for a period of six months prior thereto. There is no dispute that at that point, the Company was faced with serious financial difficulties and to overcome the situation, it resorted to the retrenchment of the junior most workmen. It paid the retrenchment compensation to them as required by law. However, it deducted the lay off compensation paid to them earlier from this amount of retrenchment compensation. On a reference having been raised to the Tribunal, it did not dispute the bona fides of the retrenchment and, therefore, by its Award dated 27th March

1987, it dismissed the reference seeking reinstatement with full back wages and continuity of service. Thereafter it is the learned Single Judge of this Court, who found that the adjustment of the lay off compensation towards the retrenchment compensation was contrary to the provisions of the I.D. Act. The learned Single Judge also in clear terms observed in para-10 of his judgment to the following effect:-

> " I find that the conclusion drawn by the Learned member of the Industrial Tribunal that the retrenchment was bonafide and justified for economic and financial reasons and there were compelling reasons for retrenchment was right. Similarly the conclusion recorded by the Tribunal that there was no malice or victimisation was also right. In this background, in my opinion, reinstatement would not be proper in grant. "

Before coming to the conclusion, the learned Single Judge noted the submissions on behalf of the respondent that at the time of rendering the judgment some 160 workmen were working and if all

65 workmen were to be reinstated then the entire Company would be required to be closed down which could affect even those 160 workmen who were then working. He noted that the position of the Company had gone from bad to worst in 1983. Many of the customers had not taken their delivery of the goods and many had not paid the dues and there was no cash flow in the hands of the Company. The Company had failed to pay sales tax dues and, therefore, attachment orders had been issued. In fact, he noted that the evidence showed that the employees' union was also made aware of this position from time to time. Ultimately instead of closing down the concern, a decision was arrived at to retrench the workmen concerned.

33. Thereafter, in the remaining part of paragraphs 10 and 11 of the judgment, the learned Judge discussed the question as to how the workmen were to be compensated. He referred to the judgments cited by both the sides. Thus, the workmen relied upon a judgment in the case of **Auro Engg. Pvt.Ltd. Nasik vs. R.V. Gadekar, Member Industrial Court, Nashik & ors. reported in 1992 Lab. I.C. page 1362** where on account of breach of Section 25-F, a learned Singe Judge of this

High Court had awarded compensation with full back wages to four workmen. The learned Single Judge distinguished it by noting that it was a case of only four workmen and the Company was running for about a year after the retrenchment. The Court noted the judgment of the Apex Court in the case of **Mohan Lal vs. The Management of M/s.Bharat Electronics Ltd. reported in AIR 1981 S.C. 1253** which was the case of the retrenchment of a single employee and the same being found bad, he was held to be continued in service with all benefits and back wages. The learned Judge further noted the judgment of the Apex Court in the case of **Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s.Hindustan Tin Works Pvt. Ltd. & ors. reported in 1978 Lab. I.C. 1667** wherein the Apex Court held that in the event of illegal termination either by dismissal, discharge or retrenchment, ordinarily the workman will be entitled to full back wages except to the extent he was gainfully employed. However, considering the financial position of the Company only 75% of the back wages were awarded in that matter. The learned Judge further noted the judgments relied upon by the respondent-Company, firstly, in the case of **S.K. Verma vs. The Central Government**

Industrial Tribunal-cum-Labour Court, New Delhi & anr. reported in AIR 1981 S.C. 422 wherein the Apex Court did hold that ordinarily if the termination of the services of workmen is bad, it must lead to reinstatement and back wages. Thereafter, the Apex Court added in paragraph 6 thereof as follows:-

> " But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement. The industry might have closed down or might be in severe financial doldrums, the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. "

Secondly, the learned Judge noted an unreported judgment of Bharucha, J. (as he then was in this Court) in **Writ Petition No.653 of 1980 (M/s.International Industries and K.G. Sawant, Hasmbhai Jetha Chawl & ors.)**. That was a case where four employees were employed only for a

short duration. The retrenchment was found to be bona fide. The compensation was offered one day late. The Court directed appropriate compensation but not reinstatement. It is considering all these factors only that the learned Single Judge sent back the matter to decide what would be the proper compensation / back wages payable to the workmen. He gave them liberty to lead evidence on that point.

34. There were certain preliminary points raised by both the sides which we would like to deal with to begin with. Mr.Talsania, learned Counsel appearing for the respondent-Company submitted that since 34 workmen have already received the compensation as per the Award made after remand, now at-least these 34 workmen cannot be permitted to re-agitate the grievance. In this behalf, he relied upon a few judgments of the Apex Court which are, however, all in the cases of employees accepting voluntary retirement. Thus, he relied upon the judgments rendered by the Apex Court in the following cases:-

i) Punjab National Bank vs. Virendra Kumar Geol (2004) 2 SC pg.193

ii) Punjab National Bank vs. S. Ranveer Singh Bawa (2004) 4 SCC pg.484

iii) Bank of India vs. Pale Ram Dhania (2004) 9 SCC pg.36.

However, as stated above, they are all cases of employees accepting benefits of VRS and thereafter trying to resile therefrom. That cannot be equated with the cases of workmen accepting retrenchment compensation. In fact, in the case of **Workmen of Subong Tea Estate vs. Subong Tea Estate reported in 1964 1 L.L.J. page 333**, the Apex Court had held as follows:-

> " Further the technical plea that the concerned workmen are estopped from challenging the validity of the retrenchment as they had accepted retrenchment compensation should not be entertained as such technical pleas are not generally entertained in industrial adjudication. "

Similarly, Mr.Bukhari, learned Counsel appearing for the petitioners tried to re-agitate the right of workmen for reinstatement. However, as stated

above, that plea has already been turned down by the learned Single Judge in his judgment on Writ Petition No.2801 of 1988. Inasmuch as we have already held that the LPA against the said judgment is not maintainable, there is no question of this Court going into that aspect which has become final for this Court. The only question to be gone into is with respect to appropriate compensation / wages to be awarded to the workmen on account of the retrenchment having been found to be in breach of the statutory provisions.

35. Again, it is material to note that when the learned Single Judge found the retrenchment to be bad for having deducted the lay off compensation from the retrenchment amount, the respondent-employer had offered to pay that amount when the matter was pending before the learned Single Judge. However, the petitioners insisted that since the retrenchment was found to be erroneous, it was just and necessary that the same ought to be interfered and the petitioners ought to be granted the consequential reliefs. It is while examining this plea of consequential reliefs that the learned Single Judge turned down the prayer for reinstatement as noted above, but sent

back the matter for leading evidence on the question of proper compensation / back wages by way of appropriate relief. This aspect was to be decided on evidence. What is material to note is that after the matter was remanded, evidence was led on behalf of the respondent-Company, but none on behalf of the workmen. One Shri Anand Kirad, Managing Director of the respondent-Company led his evidence. He pointed out as to how the financial condition of the Company was bad in the year 1982-83, as to how its capital was blocked and there were no orders for its products and that the Company was not in a position to make payments to its regular suppliers. There was difficulty in getting the raw material also. All this led to the laying off the workmen to begin with and since the position did not improve, thereafter to retrenchment. He further pointed out that the Banks had appointed the monitors to approve / sanction the expenditure of the Company. He also pointed out that the change in the import policy of the Government in the year 1987 added to the difficulties of the Company. The Company floated the Voluntary Retirement Scheme. The workers were making their grievances through correspondence that salaries were not being paid in time. There

were warrants of attachments issued by the office of the Employees Provident Fund Organisation. Therefore, the Industrial Tribunal observed in paragraph 25 as follows:-

> " All these documents show that in the year 1983 and even thereafter, the First Party Company was facing the financial problems, otherwise they had no reason to declare the lay off which was never challenged by the Second Party Union or to retrench 93 employees. "

In the cross-examination of Shri Kirad, the workmen had tried to allege that balance-sheets were not placed before the Court and Shri Kirad had no personal knowledge and that no reliable evidence was placed before the Court regarding the production cost. However, nobody was examined on

behalf of the workmen. The Tribunal, therefore, at the end of para-27 held as under:-

> " The documents got duly proved through testimony of Shri Kirad, in my view,

certainly go to show that during the relevant period, the financial condition of the First Party had gone from bad to worse. "

36. The Tribunal thereafter noted in para-33 of its judgment that more than 50% employees had not completed three years of service and that only one employee was working since 1969 and another from 1972. Others were working from 1976 to 1984. It was in these circumstances that the Tribunal having considered all these aspects formed an opinion that if the employees are awarded 12 months' salary on the basis of their basic pay plus D.A. drawn by them in November 1983, over and above the deducted lay off compensation, that should be the adequate compensation. Before coming to that conclusion, the Tribunal referred to and noted the judgments relied upon by both the parties. The workmen had relied upon a judgment in the case of **Chandulal vs. The Management of M/s.Pan American World Airways Inc. reported in 1985-II L.L.J. 181**. That was a case of loss of confidence and since the employee was not to be reinstated, he was directed to be adequately compensated. In that matter the Court considered

the back wages he would have earned as also the remaining years of his service and then arrived at the appropriate compensation. That was a case where termination had been held to be bad in law but because of loss of confidence the aforesaid compensation was awarded. However, the Tribunal did not extend that approach in our case since that was a case of loss of confidence in individual employee. Similar was the case of **O.P.Bhandari vs. Indian Tourism Development Corporation Ltd. & others reported in AIR 1987 S.C. 111**. That was a case where some of the acts of the appellant-Manager in a hotel of the respondents were opposed by a Trade Union of employees. Reinstatement was held not to be desirable and payment of compensation of 3.33 years salary was awarded. The Tribunal held that the case was clearly distinguishable on its facts and the proposition could not be extended to the present case.

37. The respondent-Company relied upon a judgment of the Madras High Court in the case of **Management of Coimbatore Pioneer B. Mills vs. Presiding Officer, Labour Court, Coimbatore & ors. reported in (1979) I L.L.J. 41** which was left

undisturbed by the Apex Court in **1980 1 L.L.J. 503** while slightly raising the compensation payable to the workmen. That was a case where 87 workers of the Mill-Company were retrenched but the retrenchment compensation and notice payable were not paid either before or simultaneously with the notice of retrenchment. On the facts of the case, the Labour Court found the retrenchment to be bona fide and that the reasons therefor to be legal and valid. It awarded one month's wages in lieu of reinstatement. The High Court modified the Labour Court's Award by raising the compensation to two months. The Apex Court added another sum of Rs.750/- to the amounts to be paid to the workmen. The judgment of the Apex Court in the case of **M/s.Swadesamitran Limited vs. Their Workmen reported in AIR 1960 S.C. 762** was cited before the Division Bench of the Madras High Court to contend that there was no option to the Labour Court but to order reinstatement in all cases of non-compliance with the provisions of Section 25-F. The Division Bench in terms held that the said judgment was not an authority for such a position. The judgment of the Apex Court in the case of **State of Bombay vs. Hospital Mazdoor Sabha & ors. reported in 1960-I L.L.J. 251** was

also cited for the proposition that non-compliance with the condition of Section 25-F would render the impugned retrenchment invalid and inoperative. The Division Bench referred to many other judgments to the similar effect in paragraph 10 of its judgment. Thereafter, it observed as follows:-

> " But in none of these decisions cited it has been held that even if the Labour Court were to find that there was need for retrenchment and the retrenchment was bona fide, there was no option for the Labour Court but to order reinstatement in all cases of non-compliance of the provisions of Section 25F of the Act. The decision in Swadesamitran Ltd. Their Workmen, A.I.R. 1960 S.C. 762, which was relied on by the learned single Judge and the learned counsel for the workmen before us, is in our opinion, not an authority for this position. "

The Counsel for both the parties have taken us through the judgments of the Apex Court in the cases of Hospital Mazdoor Sabha as well as

Swadesamitran Limited (supra) and we have no reason to take a different view from that of the Madras High Court, which, as stated above, has been left undisturbed by the Apex Court. Swadesamitran Limited has also been considered in S.K.Verma (supra) where the Apex Court has held, as noted above, that where there are severe financial difficulties there is a vestige of discretion left in the Court to pass appropriate consequential orders.

38. Mr.Bukhari, learned Counsel appearing for the petitioners, submitted that the Tribunal ought to have noted what was the balance period of service that was left for the employees to complete and not the tenure that they had put in at the time of their retrenchment. He further submitted that subsequently the respondent-Company was doing much better and the Tribunal should have considered the financial position of the Company as on 3rd May 2001 when the Tribunal gave the Award after remand and not its financial position when it resorted to retrenchment. In his submission, payment of 12 months' wages by way of compensation was too meagre.

39. Mr.Talsania, learned Counsel appearing for the respondent-Company, on the other hand, submitted that the Tribunal was concerned with the circumstances which led to the retrenchment of the employees and if there was any breach of the statutory provisions, at that point of time, what should have been the compensation to the employees. That apart, he submitted that when the writ Court was examining as to whether the Tribunal had exercised its jurisdiction properly, it has got to be noted that when it comes to grant of back wages, certain amount of discretion is always left with the Tribunal. The High Court is not expected to go into the factual aspects of the matter unless there is an element of perversity. He pressed for approval the observations of the Apex Court in paragraphs 8 and 9 in the case of **P.G.I. of Medical Education & Research, Chandigarh vs. Raj Kumar reported in (2001) 2 SCC page 54**. The Apex Court has noted in these paragraphs that although guiding principles for grant of relief of back wages were laid down in the case of **Hindustan Tin** (supra), yet in that very matter, the Court reduced the back wages to 75%. He pointed out that this judgment has been reiterated in the case of **M.P. State Electricity**

Board vs. Jarina Bee (Smt) reported in (2003) 6 SCC page 141. These paragraphs 8 and 9 read as under:-

> " 8. While it is true that in the event of failure in compliance with Section 25-F read with Section 25(b) of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which in Hindustan Tin Works (P) Ltd. case this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While, however, recording the guiding principle for the grant of relief of back wages this Court in Hindustan case, itself reduced the back wages to 75%, the reason being the contextual facts and circumstances of the case under consideration. "
>
> " 9. The Labour Court being the final court of facts came to a conclusion that

payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. it is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob v. K.S. Radhakrishnan. "

40. Having noted the submissions of both the Counsel, in our view, there is no difficulty in saying that where there is a breach of the statutory provisions, normally the workmen concerned will be entitled to the appropriate relief which could be in the range of reinstatement and/or full back wages. That, however, does not mean that in each and every case that will be the formula without leaving any discretion with the Tribunal. It is the totality of the circumstances which the Tribunal has to consider. Arriving at the decision with respect to the invalidity of the action of the employer is one thing and moulding the relief thereafter is another. There cannot be any strait-jacket formula in that behalf. In the facts of the case, what we find is that the error on the part of the respondent-employer was to deduct the lay off compensation from the amount of retrenchment when it was resorted to in November 1983. It had adequately come in the evidence that the Company

was in financial difficulties. It resorted to lay off of the employees for 6 months and since that did not improve the situation, it resorted to retrenchment. As far as the relief of reinstatement is concerned, that was ruled out by the learned Single Judge when he decided the earlier Writ Petition No.2801 of 1988. The only question which remained was with respect to the adequate compensation / wages. After the remand, the Company reiterated its financial difficulties and also pointed out that more than 50% of the employees had put in hardly 3 years service. It is, therefore, that the Tribunal awarded 12 months' wages by way of compensation which was over and above the deducted lay off compensation. This was an exercise of discretion on the part of the Tribunal. Considering the totality of the circumstances, we do not think that the Tribunal had misguided itself in making the Award or relying on the short services that majority of the employees had put in at the time of their retrenchment. One can certainly have another view in such matters and there cannot be any strait-jacket formula with respect to the relief to be granted. So long as the decision of the Tribunal is based on the material on record and is

not perverse, the High Court cannot substitute its own views for that of the Tribunal. It is not possible for us to say that exercise of discretion by the Tribunal was perverse. It is also material to note that although after remand, which was at the instance of the petitioners-workmen, it was the respondent-Company which led evidence but none of the workmen stepped into the witness box to point out as to whether they were unemployed or what were their circumstances. We, therefore, do not find any fault with the Award of the Tribunal.

41. In the circumstances, Writ Petition No.4125 of 2003 stands dismissed, though without any order as to costs.

(H.L. GOKHALE, J.)

(V.K.TAHILRAMANI, J.)